

HONORABLE RUDI M. BREWSTER
U.S. DISTRICT JUDGE
CIVIL PRETRIAL & TRIAL PROCEDURES

Please note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

GENERAL DECORUM

Please be on time for each court session. Trial engagements take precedence over any other business. If you have matters in any other courtroom, arrange in advance for the handling of such matters by you or have an associate handle them for you.

The Court uses a sound recording system to create the official record for all proceedings. Therefore, whenever speaking, counsel must use a microphone so that the Court's electronic recording system will contain a complete record. If counsel moves away from the lectern, counsel must speak into a microphone.

All persons, whether observers, witnesses, lawyers, or clients, must maintain proper decorum while in Court. Counsel shall rise (being cognizant of the need to speak into a microphone) when addressing the Court, examining a witness, and in jury cases when the jury enters or leaves the courtroom. When addressing the Court, counsel should use "Your Honor," as opposed to "Judge." Counsel should only address the Court--not the law clerk, courtroom deputy, court reporter, or opposing counsel.

Pursuant to Civil Local Rule 83.4, lawyers must behave in a professional manner. Specifically, lawyers must:

- (1) Be courteous and civil in all communications, oral and written.
- (2) Be a vigorous and zealous advocate on behalf of a client without acting in a manner detrimental to the proper functioning of the judicial system.
- (3) Attempt to resolve litigation consistent with the interest of his/her client.
- (4) Attempt to informally resolve disputes with opposing counsel.
- (5) Agree to reasonable scheduling changes, requests for extensions of time and waivers of procedural formalities, if the legitimate interest of a client will not be adversely affected.
- (6) Communicate with opposing counsel in an attempt to establish a discovery plan and voluntary exchange of information.
- (7) When possible, confer with opposing counsel before scheduling or re-

scheduling hearings, depositions, and meetings and notify all parties and the Court as early as possible when hearings or depositions must be cancelled.

Parties are reminded of their responsibility to ensure that papers filed with the Court are in conformance with the Local Rules, i.e., double spaced on one side, in 10-point Courier font or 12-point Times New Roman font, and within the page requirements.

ORDERS

Orders that are prepared for the Court should not be prepared on counsel's letterhead. The Court will usually prepare its own written order ruling on civil motions.

STIPULATIONS

Stipulations agreed upon during trial need not be signed by the Court. However, counsel should meet and confer outside the presence of the jury before presenting a stipulation to the Court.

Any stipulation for which the parties seek Court approval shall include the language "And Order Thereon" in both the title of the stipulation and in the body of the document.

SETTLEMENT

If the parties settle a case, counsel should immediately notify a law clerk of the settlement. Within twenty-eight (28) days of notification, the parties shall file a "Joint Stipulation And Order Thereon" for dismissal of the case.

INITIAL STATUS CONFERENCE

Pursuant to Civil Local Rule 16.1(c), within forty-five (45) days of the filing of an answer, or as otherwise ordered by the court, counsel and the parties shall appear before the magistrate judge supervising discovery for an early neutral evaluation conference. This appearance shall be made with authority to discuss and enter into settlement.

INITIAL SCHEDULING ORDER

An initial scheduling order will be issued by the magistrate judge assigned to the case. The scheduling order usually sets the following:

- (1) Date of discovery planning meeting pursuant to rule 26(f) of the Federal Rules of Civil Procedure;

- (2) Date to lodge discovery plan with the Court;
- (3) Date for initial disclosures under Rule 26(a)(1)(A)-(D); and
- (4) Date of the Case Management Conference.

CASE MANAGEMENT CONFERENCE

Counsel and parties will meet with the assigned magistrate judge for a Case Management Conference. Prior to the Case Management Conference counsel shall attempt to identify all discovery issues and endeavor to resolve any disputes. Procedures for the Case Management Conference are set forth in Local Rule 16.1(d).

Either during the case management conference, or shortly after, the magistrate judge will set, after consultation with the Court, the pre-trial and trial dates. Typically, the pre-trial date will be within three weeks of the trial date.

TEMPORARY RESTRAINING ORDERS/PRELIMINARY INJUNCTIONS

Temporary restraining orders and preliminary injunctions will be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure. In extraordinary circumstances, temporary restraining orders may be heard ex parte, but otherwise the Court requires service on the other side before proceeding. Alternatively, the Court may issue a limited temporary restraining order to preserve the status quo pending further briefing on the issue. The Court will generally require the moving party to give notice of the date set for the hearing, if any, at least by telephone.

DISCOVERY & PROTECTIVE ORDERS

All motions to compel discovery are referred to the magistrate judge assigned to the case. The Magistrate Court will not entertain motions pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure unless counsel have previously met and conferred concerning all disputed issues. Civil Local Rule 26.1(a).

Protective orders shall issue only for good cause shown, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and may be modified by the Court at anytime.

PRETRIAL CONFERENCE

Pursuant to Civil Local Rule 16.1(f)(7), the Court requires that the Plaintiff file the pretrial order no less than five days before the pretrial conference. The pretrial orders must include all elements set out in Civil Local Rule 16.1(f)(7)(c) and any other issues

relevant to the trial. The Court expects all parties to cooperate in completing the pretrial order.

PRETRIAL MOTION PRACTICE

Pursuant to Civil Local Rule 7.1(b)(2), all dates for motion hearings may be obtained by calling the law clerk, but may be modified by Court Order. Briefing schedules are set forth in the Local Rules. There are no additional filing deadlines other than those set forth in the Local Rules, unless the Court sets a specific briefing schedule in the case. If the Court requires additional briefing, it will inform the parties.

Parties scheduling a motion beyond 28 calendar days need not be ready to file the motion within 48 hours of obtaining a hearing date from the law clerk. However, parties must still comply with the briefing schedules set forth in Civil Local Rule 7.1(e).

The Court may hear motions on the papers and without oral argument, in accordance with Civil Local Rule 7.1(d)(1). Unless informed otherwise, parties should assume that the Court will hear oral arguments in open court.

MOTIONS IN LIMINE

At the pretrial conference, the Court will set a date for motions in limine. If no separate briefing schedule is ordered by the Court, the parties should follow the 28-day motion filing schedule as set forth in the Local Rules to determine the filing deadline for the motions in limine, opposition, and reply.

TRIAL BRIEFS

Pursuant to the Local Rule 16.1(f)(9), the parties shall, no later than seven days prior to the date of trial: (1) serve and file all briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues, setting forth briefly the party's positions and the supporting arguments and authorities; and (2) serve and file proposed voir dire questions and verdict forms.

Fourteen days before trial the parties shall file a "Joint Trial Brief" that sets forth:

- (1) Any facts the parties no longer dispute;
- (2) Copies of depositions to be offered into evidence;
- (3) Written waivers of claims or defenses, if any; and
- (4) An itemized statement of special damages, if applicable.

JURY SELECTION

The Court will consider a jury questionnaire when requested by a party not less than sixty (60) days before the trial date.

At the start of voir dire, the courtroom deputy will provide counsel with a list of the jury panel in the order they were randomly drawn in the jury lounge. The Court will conduct the initial jury voir dire and grant each side twenty (20) minutes of follow-up voir dire. The blind strike system regarding the exercise of peremptory challenges will be used. Generally, any challenges for cause/Batson issues will occur at sidebar.

VIDEO EQUIPMENT

If a party intends to use any special equipment, such as video projectors, slide projectors, tape recorders, or the like, they should notify the courtroom deputy seven days prior to the date of trial, and prepare and submit to the Court a draft Order listing all such equipment.

EXHIBITS

Each counsel should contact the courtroom deputy prior to numbering their exhibits. The courtroom deputy will assign a block of numbers to each counsel. No letters shall be used. Exhibit stickers may be obtained from the courtroom deputy clerk or the Intake Window of the Clerk's Office, in advance of the start of trial.

Exhibits are to be placed in three-ring binders separated by tabs. At the start of trial, unless ordered by the Court to do so earlier, the parties shall provide one copy of the exhibit notebooks to the Court.

Each counsel must keep counsel's own list of exhibits and should keep track when each has been admitted into evidence. The deputy clerk will have the official exhibit list. Once an exhibit is admitted it is the property of the court and must remain in the courtroom, unless otherwise ordered by the Court.

Counsel must show each other all exhibits, except for those intended to impeach witnesses. An exhibit must be admitted into evidence before counsel may show it to the jury. When referring to an exhibit, counsel should refer to its exhibit number whenever possible.

The Court, upon request, may permit truly significant exhibits to be passed to the jury. However, counsel should use this sparingly.

Pursuant to General order 340, at the conclusion of trial, all exhibits will be returned to the party who produced them.

TRIAL SCHEDULE

Trial generally proceeds from 9:00 a.m. to 4:30 p.m., Monday through Thursday, unless the Court schedules otherwise. Jury deliberations generally proceed from 9:00 a.m. to 4:30 p.m., unless the Court schedules otherwise. The Court will notify the parties of deviations from this schedule.

In civil trials, it is the practice of the Court to set a reasonable time limit for the entire trial. This time limit will reflect the estimates of counsel but is also based on the Court's independent assessment of the time necessary to complete the trial. The time limit set by the Court includes opening statements, arguments, testimony, and any other matters that occur over the course of the trial, excluding jury selection.

The Court will keep track of time limits and will inform the parties periodically of the time spent and remaining for trial, generally at the end of each trial day.

The time limit is subject to exception for good cause shown.

TRIAL PROCEDURE

The parties must provide opposing counsel with at least twenty-four (24) hours notice of the witnesses to be called to testify at trial on the succeeding day. The Court expects promptness from counsel and witnesses. It is counsel's duty to tell the Court on the first day of trial of any commitments in any other court on a subsequent day that may result in absence or late arrival. Due to the Court's schedule, counsel and witnesses are expected to be present for trial except for emergencies.

Lawyers must make every effort to have their witnesses available on the day they are to testify. The Court attempts to accommodate witnesses' schedules and may permit counsel to call them out of sequence if warranted by the circumstances. Counsel must anticipate any such possibility and discuss it with opposing counsel and the Court. Counsel must promptly alert the Court to any scheduling problems involving witnesses.

When counsel has the floor, the Court expects that opposing counsel will not distract the Court or jury by conversing audibly with their client or co-counsel, ostentatiously passing notes, rummaging through papers, or other conspicuous conduct.

OPENING STATEMENTS AND SUMMATION

Opening statements shall not include legal arguments and should not argue the case. Opening statements shall state only the facts that each party believes will be presented at trial.

The Court will pre-instruct the jury on the law prior to summation by counsel if requested to do so. Counsel are encouraged to use the law in their summations. After summation, the Court will give concluding instructions.

EXAMINATION OF WITNESSES

Counsel is responsible for furnishing the courtroom deputy with a current list of witnesses prior to commencement of trial. Except for young witnesses under age 14, counsel should address witnesses by their surnames, *e.g.*, Mr. or Ms. A., Sergeant B, or Doctor C.

Counsel shall not assert their personal opinion as to the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused. Nor shall counsel assert personal knowledge of a fact in issue, or assert a fact not in evidence. Counsel should not by facial expression, nodding or other conduct exhibit any opinion, adverse or favorable, concerning any testimony being given by a witness. Counsel should admonish counsel's own clients and witnesses to avoid such conduct.

Where a party has more than one counsel, only that counsel may conduct the direct or cross examination of a given witness and make any objections.

OBJECTIONS

When objecting, counsel must state the objection and state only that counsel objects and the legal ground of objection. If the Court needs additional information to rule on the objection, the Court will ask for further argument. Counsel should avoid arguing the objection in the presence of the jury and should not argue with the ruling of the Court in the presence of the jury. Such matters may be raised at the first recess without waiving any rights by such delayed motion.

MOTIONS DURING TRIAL

Counsel should not make oral motions (*e.g.*, motions for mistrial) in the presence of the jury. Such motions may be made at the next recess without waiving any rights by the delay.

The Court will not hear motions that are brought for the first time in trial without a strong showing that counsel could not have filed them sooner. This includes admissibility questions. Most issues can be anticipated before trial. If any counsel raises during the trial a question of law that could not have been raised before trial, and may require research and/or briefing, counsel should give the Court advance notice when possible.

BENCH CONFERENCES

During a jury trial, the Court wishes to maximize the jury's time and therefore strongly discourages sidebar conferences while the jury is in the jury box. If counsel wishes to speak to the Court outside the jury's presence, counsel may request to do so at the start of a recess or at the end of the day. The Court will generally not grant requests to see the Court outside the presence of the jury when the Court is about to begin the day of trial or reconvene following a recess since these matters can generally await the next recess.

DEPOSITIONS

When possible, counsel should provide the Court with a list of deposition excerpts (page and line) that will be read in Court.

In using depositions of an adverse party for impeachment, either one of the following procedure may be adopted:

- (1) If counsel wishes to read the question and answer as alleged impeachment and ask the witness no further questions on the subject, counsel may read the relevant portions of the deposition into the record, stating the page and line where the reading began and the page and line where the reading ended; or
- (2) If counsel wishes to ask the witness further questions on the subject matter, the deposition is placed in front of the witness and the witness is told to read silently the pages and lines involved. Then counsel may either ask the witness further questions on the matter and there read the quotations or read the quotations and there ask the further questions.

Where a witness is absent and the witness's testimony is offered by deposition, please observe the following procedures:

- (1) In jury cases, a reader should occupy the witness chair and read the testimony of the witness while the examining counsel asks the questions, and if included, opposing counsel should read those questions posed by opposing counsel.

- (2) In non-jury cases, the above procedure is helpful if lengthy, but if brief, counsel may simply read from the entire deposition portion selected.

JURY INSTRUCTIONS

On the first day of trial, the parties should each submit proposed jury instructions to the Court in hard copy and on disc¹ on the first day of trial, unless otherwise ordered by the Court. Supplemental instructions should be filed and served as soon as the need becomes apparent.

Jury instruction conferences are held after hours and are not part of the time allocated for the trial. Counsel must cite the authority supporting any proposed instructions. Any proposed modifications of instructions from statutory authority or the Ninth Circuit Models must state specifically the modification and the authority supporting the modification. All proposed instructions submitted by either party that the Court does not adopt will be deemed opposed.

Prior to the case being argued to the jury, the Court will generally provide each party with the jury instructions the Court intends to use. It is each party's responsibility to carefully review these jury instructions and make suggestions to the Court if modifications appear necessary.

JURY DELIBERATIONS

During jury deliberations, counsel for the parties must provide the courtroom deputy with a phone number where they may be reached. Counsel should remain within twenty (20) minutes of the Court during jury deliberations, but no party may remain in the courtroom or on that floor of the courthouse.

Counsel must not speak or interact with any jurors in the proceeding until after a verdict has been rendered. Counsel must instruct witnesses, clients, and observers not to have any interaction with the jurors.

¹WordPerfect 6.0 or higher.